

have failed. Voluntary resolution may include:

- (i) Voluntary divestiture;
- (ii) Voluntary conversion to securities which are not prohibited, or the holding of which would not violate law or regulation; or
- (iii) Voluntary reassignment to another position.

(2) If the bureau Ethics Counselor decides that remedial action is required, such action shall be initiated within a reasonable time, usually 90 days.

(b) Remedial action may include:

(1) *Reassignment or disqualification of the employee.* It may be possible for the employee to be reassigned to another job, or to be disqualified from performing particular duties. Although the number of cases where this remedy can be used should be rare, the possibility should be explored before divestiture of an interest is ordered.

(2) *Waiver.* (i) The Designated Agency Ethics Official (DAEO) is authorized to make a written advance determination pursuant to 18 U.S.C. 208(b)(1) waiving the prohibitions of 18 U.S.C. 208(a) for any Department employee except the Secretary and those employees in the same organization as the DAEO, i.e., the Department's Office of Policy, Management and Budget. The Secretary or the Deputy Secretary shall issue individual waivers pursuant to 18 U.S.C. 208(b)(1) for employees in the Office of Policy, Management and Budget.

(ii) In the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. App. (including an individual being considered for an appointment to such a position), the DAEO, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, 5 U.S.C. App., is authorized to certify in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved.

(iii) The DAEO may grant a waiver under 5 CFR 3501.103(e) from the regulatory restrictions at 5 CFR 3501.103 (b) and (c).

(3) *Divestiture of the interest.* An employee may be required to divest an in-

terest, including outside employment, that is prohibited by law or regulation. Divestiture of the interest shall be ordered in all situations where it is determined by the appropriate official that there is no other satisfactory remedy. Evidence of divestiture must be provided in the form of broker's sale receipt or other appropriate document.

NOTE TO PARAGRAPH (b)(3): It may be possible in certain cases for the tax consequences of divestiture to be delayed, if the interest is sold pursuant to a certificate of divestiture issued before the sale by the Director, U.S. Office of Government Ethics. See 5 CFR part 2634, subpart J.

(c) *Authority to order remedial action.*

(1) Each bureau Ethics Counselor is authorized to order remedial actions within his or her bureau. The advice of the appropriate Regional Solicitor, the Associate Solicitor—Division of General Law, or the Designated Agency Ethics Official or his or her designee may be sought before such an order is issued. This authority to order remedial action may not be redelegated.

(2) The Deputy Assistant Secretary for Policy is authorized to order remedial actions for employees within the Office of the Secretary, except that the Secretary shall order remedial actions in situations involving the Deputy Secretary.

(d) An employee who fails to comply with an order for remedial action is considered to be in violation of this part and shall be subject to disciplinary action.

§ 20.603 Appealing an order for remedial action.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.602, and shall have 30 days from the date of the remedial action order to exercise this right before any disciplinary action may be initiated. For appeals of remedial orders issued under § 20.602, the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be in writing and shall contain:

- (1) The basis for appeal;
- (2) Fact(s) supporting the basis; and
- (3) The telephone number where appellant can be reached to discuss facts pertinent to the appeal.

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(b) *Where to appeal.* (1) Orders for remedial action issued by an Ethics Counselor may be appealed to the Deputy Secretary, whose decision shall be final.

(2) Orders for remedial action issued by the Deputy Secretary may be appealed to the Secretary, whose decision shall be final.

(c) *Review Board analysis and recommendations.* (1)(i) Each appeal shall be considered by a Review Board consisting of:

(A) A program Assistant Secretary selected by the Designated Agency Ethics Official;

(B) The Associate Solicitor or the Deputy Associate Solicitor, Division of General law; and

(C) The Director or Deputy Director of the Departmental Office of Personnel within the Department.

(ii) Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action.

(2) The Deputy Agency Ethics Official or his or her assistant shall serve as secretary to the Review Board, except for cases in which he or she has previously participated. In such cases, the Review Board shall designate an employee who has not previously been involved with the case to serve as secretary.

(3) The Review Board members shall: (i) Obtain from the appropriate ethics counselor a full statement of actions and considerations which led to the order for remedial action including any supporting documentation or files used by the Ethics Counselor.

(ii) Obtain from the employee all facts, information, exhibits for documents which he or she feels should be considered before a final decision is made.

(iii) The secretary to the Review Board shall prepare a summary of the facts pertinent to the appeal. When appropriate, the Review Board may provide for personal appearance by the appellant before the Review Board if necessary to ascertain the circumstances concerning the appeal or may designate the Review Board secretary or

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another employee to conduct further fact finding, or may do both. Fact finding procedures shall be carried out by a person(s) who:

(A) Has not been involved in the matter being appealed; and

(B) Does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in, the matter being appealed.

(iv) Establish a file containing all documents related to the appeal, which shall be available to the appellant and his or her representative.

(v) Provide to the official who will decide the appeal an advisory recommendation on the appeal. The views of dissenting members of the Review Board shall also be provided.

(d) *Assurances to the appellant.* Each appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting an appeal;

(2) A reasonable amount of official time to present the appeal if the employee is otherwise in a duty status;

(3) The right to obtain counseling from an ethics counselor of the Department; and

(4) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that the Review Board may disallow the choice of an individual as a representative if such representation would result in a conflict of interest or position, would conflict with the priority needs of the Department, or which would give rise to unreasonable costs to the Government.

(e) *Assurances to the appellant's representative.* Each person chosen to represent an appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal; and

(2) A reasonable amount of official time to present the appeal if the representative is an employee of the Department and is otherwise in a duty status.